



CITY OF DALLAS

May 3, 1996

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Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments

In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996 and Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service.
CS Docket No. 96-83

Dear Sir or Madam:

Enclosed herewith please find an original and twelve copies of the Local Communities' Comments in the above referenced matter. Please file stamp one copy and return to the undersigned in the enclosed envelope. Should you have any questions, I may be contacted at (214) 670-3478.

Sincerely,

Scott Carlson
Assistant City Attorney
City of Dallas

On behalf of the Local Communities

Enclosures

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Comments

submitted by

the Cities of Austin, Texas; Dallas, Texas and Fort Worth, Texas and
the United States Conference of Mayors

in response to the

Notice of Proposed Rulemaking in the
Matter of Implementation of Section 207 of the Telecommunications
Act of 1996 and Restrictions on Over-the-Air Reception
Devices: Television Broadcast and Multichannel Multipoint
Distribution Service

CS Docket No. 96-83
(released April 4, 1996)

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C.

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In the Matter of)
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Implementation of Section 207 of the)
Telecommunications Act of 1996) CS Docket No. 96-83
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Restrictions on Over-the-Air)
Reception Devices: Television Broadcast)
and Multichannel Multipoint Distribution)
Service)

**Comments of the Cities of Austin, Texas; Dallas, Texas
and Fort Worth, Texas and the
United States Conference of Mayors**

The Cities of Austin, Texas; Dallas, Texas and Fort Worth, Texas and the United States Conference of Mayors ("Local Communities") file these comments in the above-captioned proceeding.

Discussion

In its Notice of Proposed Rulemaking In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996 and Restrictions on Over-the-Air Reception Devices: Television Broadcast and Multichannel Multipoint Distribution Service, CS Docket No. 96-83, (released April 4, 1996) ("NPRM"), the Federal Communications Commission ("the Commission") proposes a rule which preempts local zoning, building and other regulation

over television antennas and Multichannel Multipoint Distribution Service (“MMDS”). As discussed in the NPRM, many of the issues raised by the proposed rule are common with the rulemaking involving the preemption of local regulations affecting satellite earth stations. The Local Communities call attention to the Comments, Reply Comments, Further Comments and Petition for Reconsideration filed previously in response to the adopted satellite earth station rule. Consequently, the Local Communities have little additional to state on this proposed rulemaking.

The arguments, issues and observations advanced in the earlier satellite earth station rulemaking, though, must be viewed through the readily apparent differences in regulatory history between satellite earth stations and television antennas and MMDS. These differences would suggest that local land use regulations have neither impeded nor affected the development of television or MMDS. In fact, such restrictions, as exist, are more likely to be private party restrictions, rather than governmental. The remaining governmental restrictions are of general applicability in the form of building and safety codes, set back requirements and height restrictions.

The Commission should understand that the proposed rule prevents local governments from swiftly remedying unsafe conditions. It is not implausible for individuals to believe that placing a television antenna higher in the air will give them enhanced reception. Without the constraints of local building and other codes, what standards will apply to the installation

of such an antenna? A dangerous condition posing a threat to the antenna owner and adjacent property owners is created if the antenna is inadequately secured or placed too high or both. Yet, the Commission's proposed rule stymies any means to effectively address this condition. Before a local government can do so, a special regulation targeting television antennas must be developed and approved and the Commission must authorize enforcement. In the meantime, the unsafe condition persists.

The Commission has asked for comments regarding procedures which it might adopt to deal with requests for waivers or declaratory rulings. Previous comments offered some suggestions in the earlier satellite earth station filings. Because of the potential for unsafe structures, the Local Communities again request expedited appellate procedures and a presumption of validity of local government ordinances and codes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott Carlson", is written over a horizontal line.

Scott Carlson
Assistant City Attorney
City of Dallas

On Behalf of the Local
Communities